NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

NOTICE OF EXEMPT RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE ANIMAL SERVICES DIVISION

Editor's Note: The following Notice of Exempt Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1777.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 8, 2011.

[R11-123]

PREAMBLE

1. Sections Affected Rulemaking Action

R3-2-203 Amend R3-2-701 Amend R3-2-810 Amend

2. The specific statutory authority for the rulemaking including the authorizing statute (general), the implementing statute (specific), and the statute or session law authorizing the exemption:

Authorizing statute: A.R.S. § 3-107(A)(1); Laws 2011, Ch. 36, § 6

Implementing statute: Laws 2011, Ch. 36, § 6; A.R.S. §§ 3-607, 3-619(A), 3-1337, 3-2003, 3-2081

Exemption: Laws 2011, Ch. 36, § 6

3. The effective date of the rules:

July 20, 2011

4. A list of all previous notices appearing in the Register addressing the exempt rule:

Notice of Exempt Rulemaking: 16 A.A.R. 1331, July 23, 2010

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Dr. John Hunt, Associate Director

Address: Arizona Department of Agriculture

1688 W. Adams St. Phoenix, AZ 85007

Telephone: (602) 542-7186 Fax: (602) 542-3244 E-mail: jhunt@azda.gov

6. An explanation of the rule, including the agency's reasons for initiating the rulemaking:

This rulemaking continues certain fees increased in fiscal year 2010-2011 for fiscal year 2011-2012 for services provided in fiscal year 2011-2012. The legislature appropriates general funds to the Department based on projected revenues from these fees, and then when these fees are collected, they will be returned to the general fund. In essence, the legislature advances the funds anticipated to be collected during the year from these years with the expectation that the Department will return what is actually collected. By continuing these fee increases, the Department anticipates it will be able to collect about the same amount appropriated by the legislature for this purpose.

The service charge fee for livestock inspection under A.R.S. § 3-1337 will be \$10, which is the same fee charged for fiscal years 2008-2009 through 2010-2011.

The license to slaughter fees under A.R.S. § 3-2003 will continue to be \$250, \$300 and \$450. The fees for processing, pet food manufacturing, and meat transportation licenses will continue to be \$300; broker, jobber, and meat storage licenses will continue to be \$450; and distributor licenses will continue to be \$500. See A.R.S. § 3-2081.

Notices of Exempt Rulemaking

Manufacturing milk processing plant and wholesale distributor licenses will continue to be \$100 and milk sampler licenses and renewals will continue to be \$50 and \$30 respectively. Distributing plant licenses will continue to cost \$300 plus \$2,500 for each of the facility's pasteurizers. Similarly, producer-distributor licenses for IMS (interstate milk shipper) listed facilities will continue to cost \$150 plus \$2,500 for each of the facility's pasteurizers. The license fee for non-IMS listed producer-distributors will continue to be \$150, the same rate as the prior three years. The Department performs quarterly inspections on pasteurizers, which is why it determined to base fees on the number of pasteurizers. See A.R.S. §§ 3-607 & 3-619.

The fee for a license to engage in the manufacture of dairy trade products will continue to be \$100, the amount set out in A.R.S. § 3-665(B). This fee is included in the rule only for completeness.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study and other supporting material:

None

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

Laws 2011, Ch. 36, § 6 authorizes an exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6 for the purpose of establishing fees pursuant to those sections until July 1, 2012. As a result, this rulemaking is exempt from the requirements of the Administrative Procedures Act and no economic, small business, and consumer impact statement is required.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

Not applicable

11. A summary of the comments made regarding the rules and the agency response to them:

None

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

The Department of Agriculture Advisory Council voted on June 15, 2011 in favor of continuing the fees set out in this rulemaking through FY2011-2012.

13. Any material incorporated by reference and its location in the text:

None

14. Whether the rules were previously made as an emergency rule and, if so, whether the text was changed between the making as an emergency and the making of the final rule:

No

15. The full text of the rule follows:

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE ANIMAL SERVICES DIVISION

ARTICLE 2. MEAT AND POULTRY INSPECTION

Section

R3-2-203. Licenses; Registration; Records

ARTICLE 7. LIVESTOCK INSPECTION

Section

R3-2-701. Department Livestock Inspection

ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL

Section

R3-2-810. License Fees

ARTICLE 2. MEAT AND POULTRY INSPECTION

R3-2-203. Licenses; Registration; Records

- A. No change
 - 1. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
- **B.** No change
 - 1. No change
 - 2. No change
 - 3. No change
- C. No change
- **D.** During fiscal year 2011 and fiscal year 2012, the fee to obtain or renew a license to slaughter is:
 - 1. For not to exceed 45 head of cattle, and not to exceed 55 head of sheep, goats or swine in one calendar year, \$250.
 - 2. For more than 45 and not to exceed 150 head of cattle and more than 45 and not to exceed 160 head of sheep, goats or swine in one calendar year, \$300.
 - 3. For more than 150 head of cattle and more than 160 head of sheep, goats or swine in any one calendar year, \$450.
- E. During fiscal year 2011 and fiscal year 2012, the fee to obtain or renew a meat license is:
 - 1. For a broker, \$450.
 - 2. For exempt processing, \$300.
 - 3. For a distributor, \$500.
 - 4. For a jobber, \$450.
 - 5. For a pet food manufacturer, \$300.
 - 6. For a processor, \$300.
 - 7. For meat storage,\$450.
 - 8. For transportation, \$300.

ARTICLE 7. LIVESTOCK INSPECTION

R3-2-701. Department Livestock Inspection

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
- **B.** No change
- C. No change
- **D.** During fiscal year 2011 and fiscal year 2012, livestock officers and inspectors shall collect from the person in charge of cattle, dairy cattle, or sheep inspected a service charge of \$10 plus the per head inspection fee set out in A.R.S. § 3-1337 for making inspections for the transfer of ownership, sale, slaughter or transportation of the animals.

ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL

R3-2-810. License Fees

During fiscal year 2011 and fiscal year 2012, an applicant shall pay the following fee to obtain or renew a dairy license:

- 1. For a license to operate a milk distributing plant or business, \$300 plus \$2,500 per pasteurizer.
- 2. For a license to operate a manufacturing milk processing plant, \$100.
- 3. For a license to engage in the business of producer-distributor as an interstate milk shipper listed facility, \$150 plus \$2,500 per pasteurizer.
- 4. For a license to engage in the business of producer-distributor, \$150.
- 5. For a license to engage in the business of producer-manufacturer, \$25.
- 6. For a license to engage in the manufacture of trade products, \$100.
- 7. For a license to engage in the business of selling at wholesale milk or dairy products, or both, \$100.
- 8. For a license to sample milk or cream, an initial fee of \$50 and a renewal fee of \$30.

NOTICE OF EXEMPT RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE ENVIRONMENTAL SERVICES DIVISION

Editor's Note: The following Notice of Exempt Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1777.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 8, 2011.

[R11-122]

PREAMBLE

1. Sections Affected

Rulemaking Action

R3-3-702 Amend

2. The specific statutory authority for the rulemaking including the authorizing statute (general), the implementing statute (specific), and the statute or session law authorizing the exemption:

Authorizing statute: A.R.S. § 3-107(A)(1); Laws 2011, Ch. 36, § 6 Implementing statute: Laws 2011, Ch. 36, § 6; A.R.S. § 3-351(D)

Exemption: Laws 2011, Ch. 36, § 6

3. The effective date of the rules:

July 20, 2011

4. A list of all previous notices appearing in the Register addressing the exempt rule:

Notice of Exempt Rulemaking: 16 A.A.R. 1334, July 23, 2010

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Jack Peterson, Associate Director

Address: Arizona Department of Agriculture

1688 W. Adams St. Phoenix, AZ 85007

Telephone: (602) 542-3575

Fax: (602) 542-0466

E-mail: jpeterson@azda.gov

6. An explanation of the rule, including the agency's reasons for initiating the rulemaking:

This rulemaking continues the fee from fiscal year 2010-2011 in fiscal year 2011-2012 for services provided in fiscal year 2011-2012 for registering a pesticide from \$100 to \$110. The Department set this same fee at \$110 in fiscal years 2008-2009 and 2009-2010 under the authority of Laws 2008, Ch. 291, § 12 & Laws 2009, 4th Spec. Sess., Ch. 3, § 23. Thus, this rulemaking keeps in effect the fee the Department has been charging for the last three fiscal years.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study and other supporting material:

None

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

Laws 2011, Ch. 36, § 6 authorizes an exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6 for the purpose of establishing fees pursuant to those sections until July 1, 2012. As a result, this rulemaking is exempt from the requirements of the Administrative Procedures Act and no economic, small business, and consumer impact statement is required.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

Not applicable

Notices of Exempt Rulemaking

11. A summary of the comments made regarding the rules and the agency response to them:

Robert Shuler, representing Western Growers Association, commented that he did not want this temporary fee increase to become permanent by virtue of maintaining the increase every year and asked that the fee be decreased back down to \$100. The Department determined that the associated fund would have a negative balance at the end of FY2012 if the fee were reduced to \$100.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

The Department of Agriculture Advisory Council voted on June 15, 2011 in favor of continuing the fees set out in this rulemaking through FY2011-2012.

13. Any material incorporated by reference and its location in the text:

None

14. Whether the rules were previously made as an emergency rule and, if so, whether the text was changed between the making as an emergency and the making of the final rule:

Nο

15. The full text of the rule follows:

TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE ENVIRONMENTAL SERVICES DIVISION

ARTICLE 7. PESTICIDE

Section

R3-3-702. Pesticide Registration; Fee

ARTICLE 7. PESTICIDE

R3-3-702. Pesticide Registration; Fee

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
 - 9. No change
 - 10. No change11. No change
 - 12. No change
- **B.** No change
- C. No change
- **D.** Notwithstanding subsection (A), during fiscal year 2011 and fiscal year 2012, a person registering a pesticide or renewing a pesticide registration shall pay a \$110 fee for each pesticide for each year of registration.

NOTICE OF EXEMPT RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE PLANT SERVICES DIVISION

Editor's Note: The following Notice of Exempt Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1777.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 8, 2011.

[R11-120]

PREAMBLE

1. Sections Affected

Rulemaking Action

R3-4-301 Amend

2. The specific statutory authority for the rulemaking including the authorizing statute (general), the implementing statute (specific), and the statute or session law authorizing the exemption:

Authorizing statute: A.R.S. § 3-107(A)(1); Laws 2011, Ch. 36, § 6

Implementing statute: Laws 2011, Ch. 36, § 6; A.R.S. §§ 3-201.01(A)(5), 3-217

Exemption: Laws 2011, Ch. 36, § 6

3. The effective date of the rules:

July 20, 2011

4. A list of all previous notices appearing in the Register addressing the exempt rule:

Notice of Exempt Rulemaking: 16 A.A.R. 1336, July 23, 2010

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: G. John Caravetta, Associate Director

Address: Arizona Department of Agriculture

1688 W. Adams St. Phoenix, AZ 85007

Telephone: (602) 542-0996
Fax: (602) 542-0922
E-mail: jcaravetta@azda.gov

An explanation of the rule, including the agency's reasons for initiating the rulemaking:

This rulemaking continues nursery certification fees from fiscal year 2010-2011 in fiscal year 2011-2012 for services provided in fiscal year 2011-2012 in order to make up for decreases in general fund appropriations. By continuing these fees and fees related to phytosanitary certification generally, the Department anticipates it will be able to maintain its current level of services pertaining to the plant services division for fiscal year 2011-2012.

With this rulemaking, the Department will continue to charge \$250 for general nursery stock inspection certification, and the fee for single shipment nursery stock inspection certification (also known as state nursery stock phytosanitary certification) will continue to be \$50 plus \$10 per additional lot.

The applicant informs the Department how many lots the applicant has, and the Department issues a separate certificate for each lot. Some applicants elect to artificially divide their nursery stock shipment into several small lots because if the state of import rejects part of a lot, the entire lot is rejected. By designating multiple lots, the shipper can reduce the risk of having its entire shipment rejected. However, shippers' practice of designating multiple lots for a single shipment creates extra work for the Department in issuing multiple certificates, which is another reason for raising this fee.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study and other supporting material:

None

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

Notices of Exempt Rulemaking

9. A summary of the economic, small business, and consumer impact:

Laws 2011, Ch. 36, § 6 authorizes an exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6 for the purpose of establishing fees pursuant to those sections until July 1, 2012. As a result, this rulemaking is exempt from the requirements of the Administrative Procedures Act and no economic, small business, and consumer impact statement is required.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

Not applicable

11. A summary of the comments made regarding the rules and the agency response to them:

None received

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

The Department of Agriculture Advisory Council voted on June 15, 2011 in favor of continuing the fees set out in this rulemaking through FY2011-2012.

13. Any material incorporated by reference and its location in the text:

None

14. Whether the rules were previously made as an emergency rule and, if so, whether the text was changed between the making as an emergency and the making of the final rule:

No

15. The full text of the rule follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE PLANT SERVICES DIVISION

ARTICLE 3. NURSERY CERTIFICATION PROGRAM

Section

R3-4-301. Nursery Certification

ARTICLE 3. NURSERY CERTIFICATION PROGRAM

R3-4-301. Nursery Certification

- A. No change
- **B.** No change
 - 1. No change
 - a. No change
 - b. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change9. No change
- C. No change
 - 1. No change
 - 2. No change
 - 3. No change
- **D.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- E. No change
 - 1. No change

- 2. No change
- 3. No change
- 4. No change
- 5. No change
- 6. No change
- **F.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- **G.** Nothwithstanding subsections (B) through (D), during fiscal year 2011 and fiscal year 2012, an applicant for nursery stock inspection certification shall pay the following fee:
 - 1. For general certification, \$250.
 - 2. For single shipment certification, \$50 for the first lot plus \$10 for each additional lot per Department site trip.

NOTICE OF EXEMPT RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE PLANT SERVICES DIVISION

Editor's Note: The following Notice of Exempt Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1777.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 8, 2011.

[R11-119]

PREAMBLE

1. Sections Affected

Rulemaking Action

R3-4-408

Amend

2. The specific statutory authority for the rulemaking including the authorizing statute (general), the implementing statute (specific), and the statute or session law authorizing the exemption:

Authorizing statute: A.R.S. §§ 3-107(A)(1), 3-264(B)(2); Laws 2011, Ch. 36, § 6

Implementing statute: Laws 2011, Ch. 36, § 6; A.R.S. § 3-233(B)

Exemption: Laws 2011, Ch. 36, § 6

3. The effective date of the rules:

July 20, 2011

4. A list of all previous notices appearing in the Register addressing the exempt rule:

Notice of Exempt Rulemaking: 16 A.A.R. 2029, October 15, 2010

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Jack Peterson, Associate Director

Address: Arizona Department of Agriculture

1688 W. Adams St. Phoenix, AZ 85007

Telephone: (602) 542-3575

Fax: (602) 542-0466

E-mail: jpeterson@azda.gov

6. An explanation of the rule, including the agency's reasons for initiating the rulemaking:

This rulemaking continues certain fees from fiscal year 2010-2011 in fiscal year 2011-2012 for services provided in fiscal year 2011-2012. The specific funds at issue in this rulemaking have more money that the Department has been authorized by appropriation to spend. Accordingly, these temporary fee reductions will help balance the money in the fund vis-à-vis the Department's appropriation authority.

Notices of Exempt Rulemaking

There will be no charge for a seed dealer license or a seed labeler license in FY2011-2012, the same as in FY2010-2011, which is down from the regular fees of \$50 and \$100 respectively. The reduced fee applies to license applicants who apply for a license through June 30, 2012.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study and other supporting material:

None

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

Laws 2011, Ch. 36, § 6 authorizes an exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6 for the purpose of establishing fees pursuant to those sections until July 1, 2012. As a result, this rulemaking is exempt from the requirements of the Administrative Procedures Act and no economic, small business, and consumer impact statement is required.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

Not applicable

11. A summary of the comments made regarding the rules and the agency response to them:

None

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

The Department of Agriculture Advisory Council voted on June 15, 2011 in favor of continuing the fees set out in this rulemaking through FY2011-2012.

13. Any material incorporated by reference and its location in the text:

None

14. Whether the rules were previously made as an emergency rule and, if so, whether the text was changed between the making as an emergency and the making of the final rule:

No

15. The full text of the rule follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE PLANT SERVICES DIVISION

ARTICLE 4. SEEDS

Section

R3-4-408. Licenses: Seed Dealer and Seed Labeler; Fees

ARTICLE 4. SEEDS

R3-4-408. Licenses: Seed Dealer and Seed Labeler; Fees

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
- **B.** No change
- C. No change
 - 1. No change
 - 2. No change

D. During fiscal year 2011 and fiscal year 2012, notwithstanding subsection (C), there is no fee to obtain a seed dealer or seed labeler license.

NOTICE OF EXEMPT RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 6. DEPARTMENT OF AGRICULTURE OFFICE OF COMMODITY DEVELOPMENT AND PROMOTION

Editor's Note: The following Notice of Exempt Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1777.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 8, 2011.

[R11-121]

PREAMBLE

1. Sections Affected

R3-6-102

Rulemaking Action

Amend

2. The specific statutory authority for the rulemaking including the authorizing statute (general), the implementing statute (specific), and the statute or session law authorizing the exemption:

Authorizing statute: A.R.S. § 3-107(A)(1) and (B)(3); Laws 2011, Ch. 36, § 6

Implementing statute: Laws 2011, Ch. 36, § 6; A.R.S. § 3-109.02(A)

Exemption: Laws 2011, Ch. 36, § 6

3. The effective date of the rules:

July 20, 2011

4. A list of all previous notices appearing in the Register addressing the exempt rule:

Notice of Exempt Rulemaking: 16 A.A.R. 1339, July 23, 2010

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: G. John Caravetta, Associate Director

Address: Arizona Department of Agriculture

1688 W. Adams St. Phoenix, AZ 85007

Telephone: (602) 542-0996 Fax: (602) 542-0922

E-mail: jcaravetta@azda.gov

6. An explanation of the rule, including the agency's reasons for initiating the rulemaking:

This rulemaking continues fees from fiscal year 2010-2011 in fiscal year 2011-2012 for services provided in fiscal year 2011-2012 for phytosanitary certification in order to make up for decreases in general fund appropriations. By continuing these fees and nursery stock inspection certification fees, the Department anticipates it will be able to maintain its current level of services pertaining to the plant services division for fiscal year 2011-2012.

With this rulemaking, the fee for state phytosanitary certification continues to be \$50 plus \$10 per additional lot and the fee for federal phytosanitary certification continues to be \$56. In addition to the \$56 fee for federal phytosanitary certification paid for the benefit of the Department, applicants will continue to pay a federal administrative user fee for the federal government as required by federal law. The federal administrative user fee is currently \$6 for shippers who use the "Phytosanitary Certificate Issuance and Tracking System" paper applications and \$12 for those who do not.

The applicant informs the Department how many lots the applicant has, and the Department issues a separate certificate for each lot. Some applicants elect to artificially divide their shipment into several small lots because if the state of import rejects part of a lot, the entire lot is rejected. By designating multiple lots, the shipper can reduce the risk of having its entire shipment rejected. However, shippers' practice of designating multiple lots for a single shipment creates extra work for the Department in issuing multiple certificates, which is another reason for continuing this fee for another fiscal year.

Notices of Exempt Rulemaking

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study and other supporting material:

None

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

Laws 2011, Ch. 36, § 6 authorizes an exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6 for the purpose of establishing fees pursuant to those sections until July 1, 2012. As a result, this rulemaking is exempt from the requirements of the Administrative Procedures Act and no economic, small business, and consumer impact statement is required.

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

Not applicable

11. A summary of the comments made regarding the rules and the agency response to them:

None received

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

The Department of Agriculture Advisory Council voted on June 15, 2011 in favor of continuing the fees set out in this rulemaking through FY2011-2012.

13. Any material incorporated by reference and its location in the text:

7 CFR 354.3(g)(3)(i), revised January 1, 2011, is incorporated by reference in R3-6-102(A)(2).

14. Whether the rules were previously made as an emergency rule and, if so, whether the text was changed between the making as an emergency and the making of the final rule:

No

15. The full text of the rule follows:

TITLE 3. AGRICULTURE

CHAPTER 6. DEPARTMENT OF AGRICULTURE OFFICE OF COMMODITY DEVELOPMENT AND PROMOTION

ARTICLE 1. MARKETING

Section

R3-6-102. Phytosanitary Certification

ARTICLE 1. MARKETING

R3-6-102. Phytosanitary Certification

- **A.** During fiscal year 2011 and fiscal year 2012, a person who applies to the Department for phytosanitary certification shall pay the following fee:
 - 1. For state certification, \$50 for the first lot plus \$10 for each additional lot per Department site trip.
 - 2. For federal certification, \$56 plus the federal administrative user fee set out in 7 CFR 354.3(g)(3)(i), revised January 1, 2010, January 1, 2011, which is incorporated by reference and does not include any later amendments or editions. A copy of the incorporated material is available for inspection at the Department, 1688 W. Adams St., Phoenix, Arizona 85007 or may also be viewed at www.gpoaccess.gov/cfr/index.html or purchased from the U.S. Government Online Bookstore at bookstore.gpo.gov http://www.gpoaccess.gov/fdsys/.
- **B.** This Section does not apply to phytosanitary certification under A.A.C. R3-4-301.

NOTICE OF EXEMPT RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 9. DEPARTMENT OF AGRICULTURE AGRICULTURAL COUNCILS AND COMMISSIONS

Editor's Note: The following Notice of Exempt Rulemaking was exempt from Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1777.)

[R11-118]

PREAMBLE

1. Sections Affected

Rulemaking Action

R3-9-601 Amend

2. The specific statutory authority for the rulemaking, including the authorizing statute (general), the implementing statute (specific), and the statute or session law authorizing the exemption:

Authorizing statute: A.R.S. § 3-414(C)(11) Implementing statute: A.R.S. § 3-404(B) Exemption: A.R.S. § 41-1005(A)(29)

3. The effective date of the rule:

August 1, 2011

4. A list of all previous notices appearing in the Register addressing the exempt rule:

Notice of Exempt Rulemaking: 16 A.A.R. 2282, November 26, 2010

Notice of Agency Guidance Document: 15 A.A.R. 1106, June 26, 2009

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Casey Cullings

Address: Arizona Department of Agriculture

1688 W. Adams St. Phoenix, AZ 85007

Telephone: (602) 542-0962 Fax: (602) 542-5420

E-mail: casey.cullings@azag.gov

6. An explanation of the rule, including the agency's reasons for initiating the rules:

The Leafy Green Marketing Committee administers and enforces the Arizona Leafy Green Products Shipper Marketing Agreement. This marketing agreement requires shippers of leafy green vegetables who are signatories to the agreement to follow best practices with respect to the handling of those products in order to enhance food safety and prevent the outbreak of illnesses stemming from the consumption of leafy green vegetables. The marketing agreement, along with service mark usage guidelines signed by each signatory, sets out that signatories may use the Leafy Green Marketing Committee's collective service mark as long as they are in compliance with the best practices. This exempt rulemaking amends the definition of best practices by incorporating the latest version of the Commodity Specific Food Safety Guidelines for the Production and Harvest of Lettuce and Leafy Greens. These Guidelines were updated by the Committee at a public meeting held on July 26, 2011.

Specifically, the amendments to the Guidelines include: (i) defining the terms co-management and green waste, (ii) rephrasing language on page 11 to incorporate the term co-management, (iii) addressing the use of not fully composted green waste as a soil amendment (treating it the same as not fully composted animal manure); (iv) rephrasing of information on pages 11, 13 and 45, (v) deleting the references to 15 tube, (vi) adding a testing exemption for certain municipal and well water sources, (vii) clarifying that at least one sample per month per distribution system must be taken on post harvest water unless an exemption applies, and (viii) adding rationales for certain practices (pages 26, 28, 34, 42, 48 and 51).

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study and other supporting material:

None

Notices of Exempt Rulemaking

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact, if applicable:

Not applicable

10. A description of the changes between the proposed rule, including supplemental notices, and final rule (if applicable):

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them, if applicable:

None

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

The head of the Leafy Green Marketing Committee is not appointed by the Governor, so Executive Order 2011-05 does not apply to this rulemaking.

13. Any material incorporated by reference and its location in the text:

The Commodity Specific Food Safety Guidelines for the Production and Harvest of Lettuce and Leafy Greens: Version 5 – Arizona dated August 1, 2011 is incorporated by reference in R3-9-601.

14. Whether the rule was previously made as an emergency rule and, if so, whether the text was changed between the making as an emergency and the making of the exempt rule:

No

15. The full text of the rule follows:

TITLE 3. AGRICULTURE

CHAPTER 9. DEPARTMENT OF AGRICULTURE AGRICULTURAL COUNCILS AND COMMISSIONS

ARTICLE 6. LEAFY GREEN MARKETING COMMITTEE

Section

R3-9-601. Definitions

ARTICLE 6. LEAFY GREEN MARKETING COMMITTEE

R3-9-601. Definitions

"Act" means A.R.S. Title 3, Chapter 3, Article 1.

"Auditor" or "Inspector" means a state or federal agricultural regulatory agency or their designee(s), or a private entity contracted by the Marketing Committee to perform inspections authorized by the Act.

"Best practices" means the "Commodity Specific Food Safety Guidelines for the Production and Harvest of Lettuce and Leafy Greens: Version 4 Version 5 – Arizona" dated August 1, 2010 2011. This document is incorporated by reference, does not include any later amendments or editions, and is available for review online at http://www.azlgma.gov/members/resources.asp and at the Arizona Department of Agriculture, 1688 W. Adams, Phoenix, Arizona 85007.

"LGMA" or "Marketing Agreement" means the Arizona Leafy Green Products Shipper Marketing Agreement dated August 29, 2007 that was approved pursuant to the Act.

"Marketing Committee" means the Marketing Committee established pursuant to the Marketing Agreement.

"Signatory" means a shipper who has signed the Marketing Agreement.

"SOP" means standard operating procedure.

NOTICE OF EXEMPT RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

Editor's Note: The following Notice of Exempt Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 1777.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 8, 2011.

[R11-116]

PREAMBLE

1. Sections Affected

Rulemaking Action

R12-15-107

New Section

2. The statutory authority for the rulemaking, including both the authorizing statutes (general) and the implementing statutes (specific):

Authorizing statutes: A.R.S. § 45-118

Statute or session law authorizing the exemption: Laws 2011, Ch. 36, § 7(C)

3. The effective date of the rule:

August 10, 2011

4. A list of all previous notices appearing in the Register addressing the proposed rule:

None

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Ken Slowinski, Chief Counsel

Address: Department of Water Resources

3550 N. Central Ave. Phoenix, AZ 85012

Telephone: (602) 771-8472 Fax: (602) 771-8686

E-mail: kcslowinski@azwater.gov

6. An explanation of the rule, including the agency's reasons for initiating the rule:

Reasons for initiating the rule

During the 2011 regular legislative session, the legislature passed and the Governor signed into law Senate Bill ("S.B.") 1624, the Environment Budget Reconciliation Bill (Laws 2011, Ch. 36, § 2, effective July 20, 2011). Section 2 of S.B. 1624 amended the Arizona Revised Statutes by adding section 45-118 which authorizes the Department of Water Resources ("Department") to assess and collect a fee from each municipality in the state ("municipality fees"). Section 7(C) of S.B. 1624 provides that the Department is exempt from the rulemaking requirements in A.R.S. Title 41, Chapter 6 for the purposes of establishing the municipality fees until July 1, 2012. The purpose of this exempt rulemaking is to establish the municipality fees for fiscal year 2011-2012.

A.R.S. § 45-118 provides that the municipality fees shall be assessed proportionately, based on the population of each municipality. A.R.S. § 45-118 further provides that the Director of the Department ("Director") shall deposit all municipality fees in the water resources fund established by A.R.S. § 45-117. The water resources fund was established in 2010 and, in addition to the municipality fees authorized by A.R.S. § 45-118, the fund consists of certain application and filing fees paid to the Department. A.R.S. § 45-117(A). Monies in the water resources fund are to be used by the Department to carry out the purposes of Title 45, Arizona Revised Statutes. A.R.S. § 45-117(C). Monies in the fund are subject to legislative appropriation, and any monies remaining in the fund at the end of a fiscal year remain in the fund and are exempt from lapsing. A.R.S. § 45-117(B).

Because A.R.S. § 45-118 requires the Director to assess the municipality fees proportionately based on each municipality's population, the only thing the Director must determine in establishing the fees is the total amount of fees to be assessed and collected from all municipalities during the fiscal year. After the total amount of municipality fees is determined, the amount to be assessed and collected from each municipality is arrived at by performing a simple mathematical calculation. A.R.S. § 45-118 does not provide any guidance to the Director on how to determine the total amount of municipality fees to be assessed and collected during a fiscal year. However, Section 7 of S.B. 1624 does contain language expressing the legislature's intent regarding the maximum amount of municipality fees the Department may assess and collect during a fiscal year.

Section 7(A) of S.B. 1624 authorizes the Department to increase its fees for services in fiscal year 2011-2012. Section 7(B) of S.B. 1624 provides that it is the intent of the legislature that the revenue generated by the fees collected pursuant to section 7(A) and the municipality fees collected pursuant to A.R.S. § 45-118 shall not exceed \$7,000,000. The Department has determined that it will not increase fees for services in fiscal year 2011-2012. Therefore, the \$7,000,000 maximum referred to in section 7(B) applies only to the municipality fees.

Although the Department may assess a total of \$7,000,000 in municipality fees in fiscal year 2011-2012, the Department recognizes that its authority to use fees in the water resources fund during a fiscal year is restrained by the amount of money the legislature appropriates to it from the fund for that fiscal year. For fiscal year 2011-2012, the legislature appropriated \$6,458,500 to the Department from the water resources fund. The Department has determined that if it were to assess and collect the full \$7,000,000 in municipality fees during fiscal year 2011-2012, the amount of fees deposited in the water resources fund during the fiscal year, together with the amount of monies carried over in the fund from the prior fiscal year, would greatly exceed the amount of money appropriated to the Department from the fund for the fiscal year. For that reason, the Department has decided to reduce the \$7,000,000 maximum amount by the amount of money carried over in the water resources fund from fiscal year 2010-2011 (\$743,312.46). As a result, the Department will assess municipality fees in the total amount of \$6,256,687.54 for fiscal year 2011-2012.

An explanation of the rule

Subsection (A) of R12-15-107 requires each municipality in the state to pay a fee to the Department in fiscal year 2011-2012 in the amount calculated pursuant to subsection (B) and by the dates specified in subsection (E).

Subsection (B) provides that a municipality's fee will be calculated in the following manner:

- 1. Divide the municipality's population by the total population of all municipalities in the state. The population numbers will all be based on the most recent United States decennial census.
- 2. Subtract the amount of unobligated monies in the water resources fund at the beginning of the fiscal year from \$7 million.
- 3. Multiply the result obtained in step 1 by the dollar amount obtained in step 2. This number will be the municipality's fee fiscal year 2011-2012.

Subsection (C) states that the Director shall notify each municipality of its municipality fee in writing by August 15, 2011. Such notice shall be provided to the municipality's city or town manager or city or town attorney.

Subsection (D) allows each municipality to seek review of the calculation of its fee. Review shall be limited only to whether the Director's calculation of the fee contained a mathematical, clerical or typographical error.

Subsection (E) establishes the timing of payment of the municipality fee. A municipality shall pay at least one-half of its fee by October 17, 2011 and any remaining portion of the fee by January 16, 2012. Should a municipality choose to do so, it may pay more than one-half of its fee by October 17, 2011.

Subsection (F) contains definitions of terms used in the Section. Subsection (G) provides that the entire Section repeals automatically on July 1, 2012.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study and other supporting material:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

Not applicable

10. A description of the changes between the proposed rules, including supplemental notices, and the final rules, (if applicable):

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them:

Not applicable

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was the rule previously made as an emergency rule? If so, please indicate the Register citation:

No

Notices of Exempt Rulemaking

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 1. FEES

Section

R12-15-107. Municipality Fee for Fiscal Year 2012

ARTICLE 1. FEES

R12-15-107. Municipality Fee for Fiscal Year 2012

- A. Each municipality in this state shall pay a fee to the Department in fiscal year 2012 in the amount calculated by the Director under subsection (B). The fee shall be paid by the dates specified in subsection (E).
- **B.** The Director shall calculate a municipality's fee for fiscal year 2012 as follows:
 - 1. Determine the ratio expressed as a percentage that the municipality's population bears to the total population of all municipalities in the state by dividing the municipality's population by the total population of all municipalities in the state.
 - 2. Subtract the amount of unobligated monies in the water resources fund at the beginning of the fiscal year from \$7 million.
 - 3. Multiply the percentage calculated in subsection (B)(1) by the result in subsection (B)(2).
- C. No later than August 15, 2011, the Director shall notify each municipality in writing of the municipality's fee for fiscal year 2012 as calculated in subsection (B), including the manner in which the fee was calculated. The notice shall be given to the municipality's city or town manager or city or town attorney.
- D. A municipality may seek review of the calculation of its fee by filing a written request for review with the Director within 15 calendar days after receipt of the initial written notice of the fee given under subsection (C). Review shall be limited to whether the Director's calculation of the fee contains a mathematical, clerical or typographical error. The Director shall make a final decision on a request for review and mail a final written decision to the municipality requesting the review within 10 calendar days after the date the Director receives the written request. The Director's final written decision shall state the municipality's fee following review.
- E. A municipality shall pay at least one-half of its fee by October 17, 2011 and any remaining portion of the fee by January 16, 2012.
- **F.** As used in this Section, the following terms have the meaning indicated:
 - 1. "Fiscal year 2012" means the year beginning July 1, 2011 and ending June 30, 2012.
 - 2. "Municipality" means an incorporated city or town.
 - 3. "Population" means the population according to the most recent United States decennial census.
- G. This Section shall repeal automatically, effective July 1, 2012.